



POLICE DEPARTMENT

September 14, 2012

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Mario Maisonet
Tax Registry No. 935233
77 Precinct
Disciplinary Case No. 2011-3639

The above-named member of the Department appeared before me on June 4, 2012, charged with the following:

1. Said Police Officer Mario Maisonet, assigned to the 77th Precinct, while on-duty, on or about January 13, 2010, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Police Officer Maisonet prepared, or caused to be prepared, a Complaint report for Criminal Mischief when in fact the Complaint report should have classified the crime as Burglary or Attempted Burglary. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT- PROHIBITED
CONDUCT

2. Said Police Officer Mario Maisonet, assigned to the 77th Precinct, while on-duty, on or about December 26, 2009, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Police Officer Maisonet prepared, or caused to be prepared, a Complaint report for Criminal Mischief when in fact the Complainant reported that an individual broke the window to her vehicle and stole property from her vehicle.

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT- PROHIBITED
CONDUCT

The Department was represented by Scott Rosenberg, Esq., Department Advocate's Office, and Respondent was represented by Michael Martinez, Esq.

Respondent, through his counsel, entered a plea of Guilty to the subject charges and testified in mitigation of the penalty. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent, having pleaded Guilty, is found Guilty as charged.

SUMMARY OF EVIDENCE IN MITIGATION

With regard to Specification No. 1, Respondent, a seven-year member of the Department, confirmed that he was on duty assigned to the 77 Precinct on January 13, 2010, when he responded to the Party Palace on St. John's Avenue, Brooklyn, in regard to a past burglary complaint. The complainant informed Respondent that the location had been broken into and ransacked. Respondent and the complainant walked to the rear of the building where they observed a hole in the rear wall of the building that appeared to have been cut out to house a window air conditioner. The complainant told Respondent that he believed that the burglar had kicked in the air conditioner and entered Party Palace through the hole in the wall.

When Respondent and the complainant re-entered the location, they saw boxes piled up in front of the area which the complainant believed was the point of entry. The Respondent, after looking at the interior of the store, disagreed with the complainant's characterization that the store had been "ransacked," nor did Respondent agree with the complainant's conclusion that the hole that had held the air conditioner was a feasible

point of entry. Respondent believed that the air conditioner had merely been broken by someone.

Since the complainant did not inform Respondent that any items were missing from the store, on the Complaint Report that Respondent prepared, he classified the crime that had occurred as Criminal Mischief because the air conditioner had been broken. Respondent agreed that he should have consulted with a supervisor and he agreed that a proper investigation would have likely resulted in the crime being classified as an Attempted Burglary. Respondent stated that if he ever again responded to the same type of situation, he would classify the crime as Attempted Burglary.

Regarding Specification No. 2, Respondent recalled that on December 26, 2009, he responded to a call regarding a vehicle which was parked at the intersection of Franklin and Bedford Avenues, Brooklyn. The complainant, who was waiting outside the vehicle, pointed to a broken window on the vehicle and told Respondent that her vehicle had been broken into. The complainant also told Respondent that she had left her cell phone and other items inside the vehicle and that these items were now missing. Respondent offered the complainant a Lost/Stolen Property form which the complainant refused to fill out. Respondent asked the complainant to provide him with the missing cell phone's IMEI number, but the complainant did not know the IMEI number.

Since Respondent had been trained that a Complaint Report alleging that a cell phone had been stolen would be considered incomplete if the IMEI number was not entered on the Complaint Report, on the Complaint Report Respondent prepared, he classified the crime reported as Criminal Mischief based on the broken window. Respondent informed the complainant that if she found the IMEI number for her cell

phone, then she should report the number to the 77 Precinct and Respondent would amend the complaint via a Complaint Follow-up Report.

Respondent testified that he now realizes, based on the questions that were posed to him during his official Department interview, that he should have included the crime of Petit Larceny, as well as Criminal Mischief, on the Complaint Report because the complainant had asserted that other items, in addition to the cell phone, had been in the vehicle and were also missing. Ever since then, when he has responded to similar situations, he always fills out a Lost/Stolen Property Report listing the items alleged to be missing.

Respondent confirmed that he did not “downgrade” these crimes for any reason other than the reasons he stated in his testimony and he did not receive any benefit for classifying the reported crimes as Criminal Mischief only. Respondent did not believe at that time that he was doing anything wrong and he did not expect to be disciplined for classifying the reported crimes as Criminal Mischief on the Complaint Reports he prepared. Respondent testified that he requested a mitigation hearing regarding these charges only because he considered the Department’s penalty offer regarding loss of vacation days to be excessive.

On cross-examination regarding Specification No. 1, Respondent explained that although the complainant had reported a burglary, the complainant did not tell Respondent that any property was missing. Respondent reiterated that the air conditioner looked to have been kicked-in and that it apparently broke when it struck the interior floor, but that it did not appear that entry could have been made through the hole in the

wall that was created when the air conditioner was kicked-in. Respondent, nonetheless, conceded that this incident should have been reported by him as an Attempted Burglary.

On cross-examination regarding Specification No. 2, Respondent confirmed that he did not report this incident as a Larceny. Respondent agreed that the complainant had told him that her cell phone and other items she described to him as educational items were missing, but the complainant did not specify what these educational items were or what their value was and the complainant never told him that her car radio and a Blackberry were missing from the car.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974).

Respondent was appointed to the Department on July 1, 2004. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has pleaded Guilty to having engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department on December 26, 2009, in that he prepared a Complaint Report for Criminal Mischief when the complainant had reported that someone had broken a window on her vehicle and stolen property that was inside the vehicle. Respondent has also pleaded Guilty to having engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department on January 13, 2010, in that he prepared a Complaint Report for Criminal Mischief when the Complaint Report should have classified the crime as a Burglary or an Attempted Burglary.

The Assistant Department Advocate recommended that Respondent forfeit 20 vacation days. The Advocate did not cite any previous disciplinary decisions in support of this penalty recommendation.

A review of previous disciplinary decisions involving misconduct similar to that which Respondent has pleaded guilty to having engaged in here shows that penalties mandating the forfeiture of 20 or more vacation days have been imposed only in cases which involve multiple misclassifications, or in cases where the Respondent has been found guilty of additional misconduct involving a misclassification or an attempted misclassification.

In Case No. 82007/06, signed on Jan. 17, 2007, a 12-year MOS forfeited 25 vacation days and was placed on one year of dismissal probation for improperly reclassifying and misclassifying charges on complaint reports on 15 occasions.

In Case No. 82008/06, signed on Jan. 17, 2007, a 13 year sergeant with no prior disciplinary record forfeited 30 vacation days and was placed on one year of dismissal probation for improperly reclassifying and misclassifying charges on complaint reports on five occasions and signing the name of another MOS on complaint report scratch sheets on three occasions.

In Case No. 83837/08, signed on June 9, 2009, a seven-year MOS with no prior disciplinary record forfeited 20 vacation days for attempting to have a misdemeanor weapons charge against his brother reduced to a violation and misrepresenting to the arresting officer that his assigned command was the Police Commissioner's Office.

Finally, in Case No. 83341/07, signed on May 23, 2011, a 14-year lieutenant with no prior disciplinary record forfeited 20 vacation days after he was found guilty of failing

to conduct a proper investigation regarding a robbery complaint and failing to properly supervise two police officers in that he improperly directed them not to prepare a Complaint Report for the crime of Robbery.

Taking into consideration Respondent's lack of a prior disciplinary record during his eight years of service, it is recommended that Respondent forfeit 15 vacation days.

Respectfully submitted,

R. VINAL
by M. Hargis
Robert W. Vinal
Assistant Deputy Commissioner Trials

APPROVED
DEC 28 2012
Raymond W. Kelly
RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER MARIO MAISONET
TAX REGISTRY NO. 935233
DISCIPLINARY CASE NO. 2011-3639

The Respondent received an overall rating of 3.5 on his 2011 performance evaluation, 3.5 on his 2010 evaluation, and 3.5 on his 2009 evaluation. He has no medals. [REDACTED]. He has no formal disciplinary record and no monitoring records.

For your consideration.

R. Vinal
by M. Ryl
Robert W. Vinal
Assistant Deputy Commissioner Trials